STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
AIR RESOURCES BOARD

P. O. Box 2815
Sacramento, California 95812

November 14, 2000

Transmittal
of
ARB Staff Rule Review Comments

To: Ms. Karen Nowak, Deputy District Counsel
Mojave Desert Air Quality Management District
Telephone Number: (760) 245-1661 x 6810
e-mail: k2nowak@mdaqmd.ca.gov

From: Dave Brown (916) 324-1129
e-mail: dabrown@arb.ca.gov

The following proposed rules, which are scheduled for a public hearing to be held by your District Board on November 27, 2000, were received by us on October 10, 2000, for our review:

Rule 1300	*General* (for amendment)
Rule 1301	*Definitions* (for amendment)
Rule 1302	*Procedure* (for amendment)
Rule 1303	*Requirements* (for amendment)
Rule 1304	*Emissions Calculations* (for amendment)
Rule 1305	*Emissions Offsets* (for amendment)
Rule 1306	*Electric Energy Generating Facilities* (for amendment)
Rule 1320	*New Source Review for Toxic Air Contaminants* (new rule)

We have reviewed the rules and have the comments on the following pages. We believe our comments are important to the effectiveness of Rules 1303 and 1320.

On October 20, 2000, Ms. Barbara Cook of our Regulatory Assistance Section, Project Assessment Branch, Stationary Source Division, spoke with you regarding comments on Rule 1320. You agreed to make a recommended change involving Comment 6 and to consider the recommendations on Comments 7 through 14.

If you have any questions about Comments 1 through 4 or 6 through 14, please contact Ms. Beverly Werner, Manager of the Regulatory Assistance Section, at (916) 322-3984. If you have questions about Comment 5, contact Mr. Randy Pasek, Manager of the Technical Analysis Section, Emissions Assessment Branch, Stationary Source Division at (916) 327-7213.

Rule review comments are on the following 5 pages

Date: November 14, 2000

Air Resources Board Staff Comments on
Mojave Desert Air Quality Management District
Proposed Rules 1301, 1303, and 1320

Rule 1301 – *Definitions*

1. Section (HH): For clarity and consistency with corresponding definitions of other Districts, we suggest that the word "significantly" be deleted from the definition of "modification." The definition should be modified to read as follows: 1-1

> Any physical or operational change to a Facility or an Emissions Unit to replace equipment, expand capacity, ~~significantly~~ revise methods of operation....

2. Section (OO): The phrase "usual or typical daily operations" appears in the Definition of "Normal Operation." To ensure enforceability of Regulation XIII, "usual daily operations" and "typical daily operations" should be defined. 1-2

3. Section (FFF): The definition of "Simultaneous Emission Reduction" does not fulfill the requirements of Health and Safety Code (H&SC) Section 39607.5, which requires that all emission reductions be permanent, enforceable, quantifiable, and surplus. The definition of "Simultaneous Emission Reduction" should be modified as follows: 1-3

> (FFF) "Simultaneous Emission Reduction" (SER) - A Federally Enforceable reduction in the actual emissions of an existing Emissions Unit, calculated pursuant to the provisions of District Rule 1304(C), which occurs at the same time as a permitting action pursuant to this Regulation. and is any of the following:
>
> (1) A reduction in the Actual Emissions of the Emissions Unit; or
>
> (2) A reduction in the Potential to Emit of the Emissions Unit so long as the HPE of the Emissions Unit was completely offset in a prior permitting action pursuant to this Regulation.

Rule 1303 Requirements

4. Section (C): Section (C) allows a major facility to increase its emissions 25 tons over a rolling five (5) year period without providing offsets for those emission increases. 1-4

In a June 28, 2000, letter to the District, ARB expressed serious concerns that the De Minimis provisions do not meet H&SC no net increase requirements. In an August 2, 2000, response letter, your District agreed that Rule 1303(C) violated the provisions of H&SC Section 40918(a), and would administratively suspend the use of Rule 1303(C) until such time as ARB's concerns could be addressed. In addition, your District's letter discussed several alternative approaches to address the issues and concluded that, "It appears that the removal of the Federal De Minimis provision in Rule 1302[3](C) is the preferable alternative." 1-4

However, it appears that the only step the District has taken is to formalize the suspension with language in the proposed Rule 1303(C) which requires suspension of the De Minimis provisions when the APCO determines (or ARB informs the APCO) that the "no net increase" provisions may not be met.

We are very concerned that the District has not revised Rule 1303(C) to comply with the H&SC Section 40918(a) no net increase permitting program. This is a critical issue. We recommend that the District take further actions to expeditiously revise Rule 1303(C) to come into compliance with H&SC.

Rule 1320 - *New Source Review for Toxic Air Contaminants*

5. Section (B)(2)(a): To ensure that all pollutants identified as Toxic Air Contaminants are subject to this rule, Section (B)(2)(a) should be modified as follows:

1-5 (a) The provisions of Subsection (D) of this Rule shall apply to any new Modified or Relocated Facility or Emissions Unit which:

(i) Emits or has the potential to emit greater than 10 tons per year of Total Organic Gases (TOG), Particulates (PM), Oxides of Nitrogen (NOx), or Oxides of Sulfur (SOx); or [Heath and Safety Code §44322 (b)]
(ii) Emits or has the potential to emit a Toxic Air Contaminant as defined in Section (C)(27) or a Regulated Toxic Substance as defined in (C)(23)
(iii) Is listed in Appendix "E" of the Emissions Inventory Criteria and guidelines For the Air Toxics "Hot Spots" Program as adopted by reference in 17 California Code of Regulations §93300.5; or [Health and Safety Code §44322(c)]
(iv) Is subject to an Airborne Toxic Control Measure. [Health and Safety Code §44322(c)]

6. Section (B)(3)(a): Section (B)(3) sets forth the sources subject to the District's "Federal Toxic New Source Review (T-NSR) Program;" however, Section (B)(3)(a) refers to the requirements of Subsection (E), State Toxic New Source Review Program Analysis. Section (B)(3)(a) should refer to the requirements in Subsection (F), Federal Toxic New Source Review Program Analysis. This change is necessary 1-6

in order that Rule 1320 fulfill the federal requirements pursuant to Section 112(g) of the Federal Clean Air Act.

7. Section (B)(3)(a)(i), (B)(3)(a)(ii), and Rule 1301: Section (B)(3)(a)(i) and Section (B)(3)(a)(ii) provide that sources with potential to emit equal to or greater than 10 tons per year (TPY) of a single hazardous air pollutant (HAP) or 25 TPY of a combination of HAPs are subject to "Federal T-NSR" requirements. The term "potential to emit" is not defined in Rule 1320; however, Section (C) of Rule 1320 indicates that the definition of "potential to emit" in Rule 1301 is operative. The "potential to emit" definition of Rule 1301 includes language requiring that a physical or operational limitation on the capacity of the emissions unit to emit pollutants be federally enforceable. In the mid-1990s, the District of Columbia Court of Appeals vacated the United States Environmental Protection Agency's (U.S. EPA) requirement that potential to emit limits be federally enforceable. Until the U.S. EPA undertakes further rulemaking to clarify the definition of "potential to emit," the Agency advises ("Second Extension of January 25, 1995 Potential to Emit Transition Policy and Clarification of Interim Policy," July 10, 1998) that "the term 'federally enforceable' in section 70.2 should now be read to mean federally enforceable or legally and practically enforceable by a State or local pollution control agency...." As per recent discussions with U.S. EPA, Region IX regarding changes to Title V rules, we recommend that the "potential to emit " definition in Rule 1301 be revised to read as follows: 1-7

> Physical and operational limitations on the emissions unit shall be treated as part of its design, if the limitations are set forth in permit conditions or in rules or regulations that are legally and practically enforceable by U.S. EPA and citizens or by the District.

8. Section (C)(4): Section (C)(4) defines "Case-by-Case Maximum Achievable Control Technology Standard" as an emissions limit or control technology that is applied to an affected source. Neither this definition, nor any of the language in Rule 1320, describes or refers to the method of determining maximum achievable control technology (MACT) set forth in Section 112(d)(3) of the Federal Clean Air Act. The Section (C)(4) definition could be interpreted to indicate that any "emissions limit or control technology" is sufficient to meet case-by-case MACT, which is contrary to the requirements of Section 112(g)(2) of the Federal Clean Air Act. Section 112(g)(2) requires that no major source of hazardous air pollutants be constructed/reconstructed unless MACT for new/existing sources as described "under this section" will be met. The method for determining MACT for new/existing sources is specified in Section 112(d)(3) (see Comment on Section (C)(14) below). Therefore, we recommend that Rule 1320 Section (C)(4) at least reference the requirements in Section 112(d)(3) of the Federal Clean Air Act. 1-8

9. Section (C)(14): Section (C)(14) defines "Maximum Achievable Control Technology Standard (MACT)" as: "The maximum degree of reduction in emissions of HAPs...." This definition is vague and leaves the decision about what 1-9

constitutes maximum emission reduction to the discretion of the District. Clearly, Congress, in enacting the Federal Clean Air Act, did not intend that MACT determinations be made solely at the discretion of the local permitting authority. Section 112(d)(3) of the Federal Clean Air Act specifies that MACT for new
1-9 sources must be at least as stringent as "the emission control that is achieved in practice by the best controlled similar source..." and that MACT for modifying existing sources must be at least as stringent as "the average emission limitation achieved by the best performing 12 percent of the existing sources...." Therefore, we recommend that Rule 1320 Section (C)(14) at least reference the requirements in Section 112(d)(3) of the Federal Clean Air Act.

10. Sections (C)(15), (C)(24), (C)(25), and (C)(26): Section (C)(15) defines "Maximum Individual Cancer Risk (MCIR)". The definitions of "Relocation" (C)(24) and "Significant Risk" (C)(26) include the term "MCIR" for "Maximum Individual Cancer
1-10 Risk" while the definition of "Significant Health Risk" (C)(25) includes the term "MICR" for "Maximum Individual Cancer Risk." There is no corresponding definition for "MICR." We recommend that the District choose an appropriate acronym (probably "MICR") and use it consistently.

11. Section (C)(21): The definition for "Reconstruction" contains a typo. We
1-11 recommend that the District amend the text as follows: "Tthe replacement of components at an existing process or Emission Unit...."

12. Sections (D),(E), and (F): Sections (D),(E), and (F) provide the basis for determining if "State T-NSR" and/or "Federal T-NSR" requirements apply. State requirements for risk prioritization, toxic emission inventory reporting, and the
1-12 submission of Health Risk Assessment Plans and Reports do not appear to conflict with Federal requirements. However, it is possible that a constructing or reconstructing major source of HAPs would not be able to comply with both State requirements for T-BACT (Rule 1320 Sections (E)(5)(b) and (E)(5)(d)(ii)(b)) and Federal requirements for MACT (Section F). Rule 1320 should clarify that T-BACT can not preclude applicable requirements of a promulgated Federal MACT standard unless the State or District has received special delegation for that MACT standard via Section 112(l) of the Federal Clean Air Act. In addition, as per an ARB and district agreement with U.S. EPA, Region IX, Rule 1320 should clarify that the more stringent of T-BACT or MACT requirements take precedence when no MACT standard has been promulgated for the source category of the facility in question.

13. Section (F)(1): Section (F)(1) sets forth "MACT Standards Requirements." Section (F)(1)(a) contains the term "CEIP" which does not appear to be defined in Section (C) or elsewhere in the text of Regulation XIII. We recommend that the term
1-13 "CEIP" be defined in Rule 1320. In addition, we recommend that Section (F)(1)(b)(i) be modified as follows: "Add the requirements of the MACT standard to any ATC...."

14. Sections (F)(2)(a) and (C)(17): Section (F)(2)(a) provides that the District's APCO determine if case-by-case MACT is needed for "...the proposed new or Reconstructed Facility or new or Modified Emissions Unit." 40 CFR Part 63 Subpart B (the implementing regulation for Section 112(g) of the Federal Clean Air Act) provides that case-by-case MACT analysis is necessary for constructing and reconstructing sources of HAPs, and Subpart B contains specific definitions for "Construct a major source" and "Reconstruct a major source." Rule 1320's definition of "Modification" appears to exclude certain changes to a facility which the Federal Subpart B definition of "Reconstruct a major source" would not exclude. According to Rule 1320 Section (C)(17)(e), the following would not be considered a "modification": "An Emissions Unit replacing a functionally identical Emissions Unit, provided there is no increase in maximum rating or increase in emissions of any HAP, TAC or Regulated Toxic Substance." According to Subpart B's definition of "Reconstruct a major source" and Rule 1320's definition of "Reconstruction" ((C)(21)), such a change would be subject to case-by-case MACT if the cost exceeds 50 percent of the fixed capital cost that would be required to construct a comparable process or production unit, and if case-by-case MACT would be technically and economically feasible. To avoid confusion, we recommend that the terms "Modified Emissions Unit " and "Modification" not be used in areas (e.g., Section (F)) of Rule 1320 which deal with "Federal Toxic-NSR" requirements.

1-14

bbc: Andy Steckel, U.S. EPA
Carl Brown/Simeon Okoroike, CD
Randy Pasek/Ron Hand, SSD
Beverly Werner/Barbara Cook/Lin Zhang, SSD
Richard Bode, PTSD
Dave Brown, SSD
Rules File 1514.10
Document id: W:\dbrown\MD Reg XIII\MD Reg XIII Cmt Ltr.doc

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

VIA FACSIMILE AND U.S. MAIL

December 15, 2000

Eldon Heaston
Deputy Air Pollution Control Officer
Mojave Air Quality Management District and
Antelope Valley Air Pollution Control District
14306 Park Avenue
Victorville, CA 92392

Re: Using Area, Indirect, and Mobile Source Emission Reductions As NSR Offsets

Dear Mr. Heaston:

Recently, we have had several conversations with Karen Nowack of your organization regarding proposed changes to the New Source Review ("NSR") rules for Mojave AQMD and Antelope APCD. Those proposed changes include the ability to use area, indirect, and mobile source emission reductions as NSR offsets for new stationary sources. NSR offsets are required under the Clean Air Act.

We request that you not include these changes at this time. The use of mobile source emission reductions as NSR offsets has only been considered in one instance, for the Otay Mesa facility in San Diego County, and under very special circumstances. We have 2-1 publically stated that other case-by-case situations may be considered, but broad programmatic rules allowing area, indirect, and mobile source emission reductions to be used as NSR offsets cannot be approved at this time.

If you have any questions regarding this matter, please call me at (415) 744-1329.

Sincerely,

Allan Zabel

Allan Zabel
Senior Counsel

cc: Duong Nguyen
Karen Nowack

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
AIR RESOURCES BOARD

P. O. Box 2815
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December 29, 2000

Transmittal
of
ARB Staff Rule Review Comments

To: Karen Nowak, Deputy District Counsel
Mojave Desert Air Quality Management District
Telephone Number: (760) 245-1661 ext. 6810
e-mail: k2nowak@mdaqmd.ca.gov

From: Dave Brown, (916) 324-1129
e-mail: dabrown@arb.ca.gov

The following proposed rules, which are scheduled for a public hearing to be held before your District Board on January 29, 2001, were received by us on December 1, 2000 for our review:

Rule 1300	General (for amendment)
Rule 1301	Definitions (for amendment)
Rule 1302	Procedure (for amendment)
Rule 1303	Requirements (for amendment)
Rule 1304	Emissions Calculations (for amendment)
Rule 1305	Emissions Offsets (for amendment)
Rule 1306	Electric Energy Generating Facilities (for amendment)
Rule 1320	New Source Review for Toxic Air Contaminants (new rule)

We have reviewed the rules and have the comments on the following pages. We believe that our comments are important to the effectiveness and enforceability of the rules.

On December 4, 2000, Ms. Lin Zhang of our Regulatory Assistance Section, Project Assessment Branch, Stationary Source Division, discussed our informal draft comments with you. You indicated that Comments 1 and 2 would be addressed. Comments 1, 2 and 3 were previously made in our November 14, 2000 letter.

In our June 28, 2000 and November 14, 2000 letters, we expressed concerns that the De Minimis provisions in Rule 1303, Section (C) do not meet Health and Safety Code (H&SC) no net increase requirements. We have been working with the District staff to

resolve our concerns and commend the District for its efforts to amend the existing De Minimis provisions to comply with State law. In the November 17, 2000, phone conversation, District staff requested our assistance in the development of appropriate language for section (C) of Rule 1303. We have provided suggested wording in Comment 3.

If you have any questions about our comments, please contact Ms. Beverly Werner, Manager of the Regulatory Assistance Section, at (916) 322-3984.

Rule review comments are on the following 3 pages

Date: December 29, 2000

Air Resources Board Staff Comments on
Mojave Desert Air Quality Management District
Proposed Rules 1300, 1301, 1302, 1303, 1304, 1305, 1306, and 1320

Rule 1300 General

We have no comments on this rule.

Rule 1301 Definitions

1. Section (OO): The phrase "usual or typical daily operations" appears in the definition of "Normal Operation". To ensure enforceability of Regulation XIII, "usual daily operations" and "typical daily operations" should be defined. 1-15

2. Section (FFF): In the definition of "Simultaneous Emission Reduction" (SER), the term "HPE" is used. However, "HPE" is not defined in the proposed rules. To ensure enforceability of this rule and to be consistent with the requirements of Health and Safety Code (H&SC) Section 39607.5, we recommend that the definition of "Simultaneous Emission Reduction" be modified as follows: 1-16

> A Federally Enforceable reduction in the actual emissions of an existing Emissions Unit, calculated pursuant to the provisions of District Rule 1304(C), which occurs at the same time as a permitting action pursuant to this Regulation, ~~and is any of the following~~:
>
> ~~(1) A reduction in the Actual Emissions of the Emissions Unit; or~~
>
> (2) ~~A reduction in the Potential to Emit of the Emissions Unit so long as the HPE of the Emissions Unit was completely offset in a prior permitting action pursuant to Regulation XIII or prior rules 203.1, 203.2, 213, 213.1, 213.2 and 213.3.~~

Rule 1302 Procedure

We have no comments on this rule.

Rule 1303 Requirements

3. Section (C): Section (C) "De Minimis Modifications at Major Facilities" allows a major facility to increase its emissions 25 tons over a rolling five (5) year period without providing offsets for those emission increases. To assist in the District's rule revisions, we are providing the following suggested wording for that section: 1-17

(C) De Minimis Modifications at Major Facilities

(1) Notwithstanding the provisions of section (B) above, the modification of an existing Major Facility shall not require offsets when:

(a) The increase in net emissions of any precursor to ozone does not exceed 25 tons when aggregated with all other increases in emissions from the Facility over any five (5) consecutive calendar years including the calendar year in which such increase occurs.

(2) The APCO shall ensure that all emission increases resulting from the utilization of section (C)(1)(a) above are contemporaneously mitigated by actual emission reductions, to comply with Health and Safety Code section 40918(a)(1). The APCO shall:

(a) with concurrence from the California Air Resources Board, obtain sufficient surplus emission reductions that meet the criteria for emission reduction credits pursuant to District Rule 1402; and

1-17

(b) mitigate all emission increases from the utilization of section (C)(1)(a) with the surplus emission reductions obtained pursuant to section (C)(2)(a); and

(c) track all surplus emission reductions obtained pursuant to section (C)(2)(a) and all emission increases mitigated pursuant to section (C)(2)(b) and maintain a running balance of unused surplus emission reductions. This balance shall always be a positive number above zero; and

(d) submit for approval a written report to the California Air Resources Board by (month and day rule adopted) of every year. The report shall list all the information tracked pursuant to section (C)(2)(c) and shall demonstrate that the utilization of section(C)(1)(a) continually satisfies the requirements of Health and Safety Code 40918(a)(1).

(3) If at any time any provision of section (2) above is not satisfied, the operation of section (C)(1)(a) above is automatically suspended to ensure compliance with Health and Safety Code 40918(a)(1).

Rule 1304 Emissions Calculations

We have no comments on this rule.

Rule 1305 Emissions Offsets

We have no comments on this rule.

Rule 1306 Electric Energy Generating Facilities

We have no comments on this rule.

Rule 1320 New Source Review for Toxic Air Contaminants

We have no comments on this rule.

bcc: Andy Steckel, U.S. EPA
Carl Brown, CD
Beverly Werner/Barbara Cook, Lin Zhang, SSD
Peggy Taricco/Ron Hand, SSD
Dave Brown, SSD
Rules File 1514.10
Document id: W:\dbrown\MD Reg XIII\MD Reg XIII Cmt Ltr.doc

SOUTHERN CALIFORNIA
EDISON
An EDISON INTERNATIONAL Company

February 28, 2001

Karen K. Nowak
Deputy District Counsel
Mojave Desert Air Quality
Management District
14306 Park Avenue
Victorville CA 92392

Reference: Regulation XIII – Task Force Comments (Rule 1320)

Dear Ms. Nowak

As we discussed by telephone on February 27, 2001(in reference to your letter of February 23, 2001 transmitting Proposed Amendments to MDAQMD Reg XIII to Task Force Members), *I request that Rule 1320 (C)(17) (f) and (g) be combined into one section and that proposed Section (C)(17)(f)(ii) be eliminated.*

Proposed Rule 1320 concerns New Source Review for Toxic Air Contaminants. Part (C) (17) of that rule defines "Modification" and provides exemptions from that definition. We agree that emergency equipment should benefit from the exemption.

Proposed MDAQMD Rule 1320 (C)(17)(f)(ii) contains a restriction that "The Emissions Unit is not used in conjunction with any utility voluntary demand reduction program." The footnote to the section says this requirement is derived from SCAQMD Rule 1401(g)(1)(F). SCAQMD Rule 1401(g)(1)(F) defines emergency engines as those
3-1 exempted in Rule 1304. SCAQMD Rule 1304 (a)(4) does not contain the "utility voluntary demand reduction" restriction in the emergency equipment definition, only a 200 hour per year limitation.. SCAQMD Rule 2005 (k)(5) that defines emergency equipment for that district's RECLAIM New Source Review program also does not have the "utility voluntary demand reduction" restriction.

For future rule amendment consideration: There does not appear to be a simple way in MDAQMD Regulation XIII to encourage the voluntary installation of control equipment. Based on our discussion this is not a major problem in your district. An example of a solution is to look at SCAQMD Rule 1304(a)(5) that provides a modeling
3-2 and offset exemption for air pollution control strategies. This avoids the comparison of historical actual emissions to future potential emissions that could show a theoretical emission increase, and allows voluntary installation of non-BACT/LAER emission reduction equipment. A comparison of existing potential emissions to future potential emissions solves this problem in all cases. Please contact me at 626-302-9538 if you wish to further discuss these recommendations.

Sincerely,

Martin W. Ledwitz

Martin W. Ledwitz
Senior Regional Air Quality Representative

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